

GREEN LANES PROTECTION GROUP

Please reply to:

6 Aug 2018

Dear Mr Hopkins

Application for DMMO under Section 53(5) of the Wildlife and Countryside Act 1981 - Bridleway 17 Beaminster, Bridleway 35 Beaminster - T354

I object to this application mainly on a short point. Although dated 21 Dec 2004, the application was not in fact lodged with DCC until 6 Feb 2005. It was thus after the cut-off date on 20 Jan 2005 and does not benefit by way of ~~s67(3)~~ exemption from the provisions of s67(1) NERCA. That precludes mpv rights ie BOAT status.

As a secondary point, the applicant said this:

FoDRoW believes enough evidence is being submitted to justify this -claim. Further evidence does exist and may be submitted at a later date, However, having considered the volume of claims likely to be submitted in the coming years this claim is being submitted now to avoid a future flood of claims when they are all fully researched

That too results in the application failing to qualify. As expressed by George Laurence QC in a joint opinion with Ross Crail in Jan 2007:

14 (1) The criterion for inclusion of documents in the list and set of copies to accompany the application is that they be 'any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application ". The time at which the applicant 's wish to adduce a particular document falls to be tested is at latest the date when he submits his list and set of copies and perfects his application.

and

The Green Lanes Protection Group presently represents the following organisations: Allen Valleys Action Group, Battle for Bridleways Group, Brecon Beacons Park Society, British Driving Society, Cambrian Mountains Society, Campaign for National Parks, Campaign to Protect Rural England, Campaign for the Protection of Rural Wales, Country Land and Business Association, Cycling UK, Bmoor Society, Friends of the Lake District, Friends of the Ridgeway, Green Lanes Environmental Action Movement, Lang Bostle Downland Preservation Society, North Wales Alliance to Influence the Management of Off-Roaded, Peak & Northern Footpaths Society, Peak District Green Lanes Alliance, Save our Paths (North Wales), South Downs Society, West Somerset & Exmoor Bridleways Association and Yorkshire Dales Green Lanes Alliance.

(4) However, "any documentary evidence " must in the context of paragraph 1 be read as equivalent to "all documentary evidence "; so if the applicant deliberately keeps some material back when submitting his original batch, or does not defer his application until he has finished researching and collating material, he is not complying with the requirements of paragraph 1.

Whether the evidence justifies reclassification to RB status is a matter for the Council to decide. [See footnote as to evidence offered.]

The law

NERCA 2006

67 Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-

But this is subject to subsections (2) to (8).

(3) Subsection (1) does not apply to an existing public right of way over a way if -

(a) before the relevant date [20 Jan 2005], an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

SCHEDULE 14 TO THE WILDLIFE AND COUNTRYSIDE ACT 1981

Applications for certain orders under part III, Section 53 Form of applications

1 An application shall be made in the prescribed form and shall be accompanied by— (a) (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

In the Winchester appeal case it was held that the regulations must be strictly applied. Other than as to the scale of maps, that was upheld by the Supreme Court in the Dorset case.

Sincerely

Footnote :

The application states that:

The following evidence is being submitted to support our DMMO application:

- Isaac Taylor Map 1796, DRO reference M14.
- Plan of roads in neighbourhood of Beaminster c. 1800, DRO reference D/RGB:LL
- Greenwoods map 1826, DRO reference M1 16.
- Beaminster Tithe map 1843, DRO reference T/BE.
- Beaminster Inclosure Map & award, DRO reference Inclosure 654 •
- Ordnance Survey Old Series 1 map, DRO reference D626/25. e Isaac Taylor's map 1765, DRO reference D626/25,

Those items appear also to be listed/included in the contents of the CD submitted in Sept 2004.

Apart from observing that maps very rarely provide any authority as to rights of way, it is up to DCC (a) to check whether this evidence in fact exists on the CD, and (b) what it proves in the way of rights.